



Paper No. 3

Stephen B. Ackerman  
20 McIntosh Drive  
Poughkeepsie, NY 12603

**COPY MAILED****AUG 09 2002****OFFICE OF PETITIONS**

In re Application of  
Chun Hong Peng et al.  
Application No. 09/919,036  
Filed: June 4, 2001  
Attorney Docket No. PR89-036

:  
:  
: DECISION DISMISSING PETITION  
:  
:

This is a decision on the petition filed June 4, 2001, requesting that a nonprovisional application of Chun Hong Peng et al. entitled "An Intelligent Wet Etching Tool as a Function of Chemical Concentration, Temperature and Film Loss" (attorney docket No. PR89-036) be accorded a filing date of September 21, 2000. A copy of the application was sent by facsimile on April 24, 2001 and was assigned application No. 09/919,036.

The petition filed June 4, 2001 is **dismissed**.

Petitioners allege that the application was deposited with three other applications in a US Postal Service Priority Envelope on September 19, 2000. Petitioners further allege that Filing Receipts and returned Postcards with Serial Numbers and Filing Dates of September 21, 2000 were received for three out of four cases but not for the application referenced above. As proof, petitioners have submitted a copy of their office Mail-Log Book allegedly showing that the four applications were mailed on September 19, 2000.

The best evidence of what was actually received in the Office is applicants' postcard receipt. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the Office of all the items listed thereon on the date stamped thereon by the Office. See MPEP 503.

The evidence presented has been carefully considered, but is not convincing of petitioners' entitlement to a filing date of September 21, 2000. While petitioners allege that the application was mailed to the USPTO in the same envelope as three other applications received September 21, 2000, petitioners have not presented a postcard receipt showing actual receipt of the application in the USPTO. Petitioners allege that the postcard receipt was never returned to petitioners. The USPTO has no record that the application papers were received on September 21, 2000. It may be that the application papers for this application were intended to be placed in the envelope with the three other applications but as a result of inadvertent error unknown to the petitioners, the application papers were omitted or placed in a different envelope for mailing and

that the original application papers were never mailed or were lost in the mail.

Petitioners have failed to provide convincing evidence that the application referenced above was contained in the Priority Envelope on September 19, 2000 and that the application was received by the Office and subsequently lost or misplaced. Therefore, the petition to accord a filing date of September 21, 2000 has been dismissed.

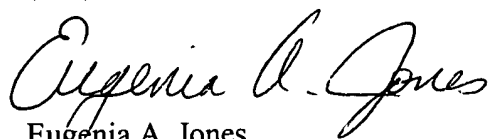
A review of the papers in application No. 09/919,036 reveals that the copy of the application papers were submitted by facsimile on April 24, 2001. The application papers submitted by facsimile on April 24, 2001 were erroneously accorded an application number and a filing date of September 21, 2000. Since the application papers submitted on April 24, 2001 were submitted by facsimile, the application papers are not entitled to a filing date. See 37 CFR 1.6(d) and 1.8(a)(2)(i)(A).

The application is entitled to a filing date of June 4, 2001, which is the date the Office received complete application papers.

The petition and application papers received June 4, 2001 have been placed in application No. 09/919,036. The application papers filed June 4, 2001 will be used in the processing and examination of the application. The duplicate copy of the application papers submitted by facsimile on April 24, 2001 will be retained in application No. 09/919,036, but will not be entered or used during the processing and examination of the application.

After mailing of this decision, the \$130.00 petition fee will be charged to counsel's deposit account No. 19-0033 as authorized in the petition. Thereafter, the application will be forwarded to the Office of Initial Patent Examination for further processing to correct the filing date of the application to June 4, 2001 and to reprocess the application with the application papers filed on June 4, 2001.

Telephone inquiries specific to this matter should be directed to Darnell M. Jayne at (703) 305-3310.



Eugenia A. Jones  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of the Deputy Commissioner  
for Patent Examination Policy